IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 418 OF 1997

Balasaheb Rangrao Kamble ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri S.V.Marwadi for the appellant.
Mrs. P.H.Kantharia APP for the State.

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CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.

DATED; 27TH JUNE, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the judgment dated 27-5-1997 passed by the Additional Sessions Judge, Kolhapur in Sessions Case No. 204 of 1996, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution story as disclosed by the evidence on record stated briefly is that Sarita wife of the accused - present appellant, died in the morning of 5th July 1996. It was reported as accidental death on a complaint lodged by the accused. However, thereafter immediately a complaint was made by the father of Sarita that it was not an accidental death but she was murdered by the accused. Because of the complaint of 5th July 1996 itself the accused was arrested, investigation was conducted and the learned trial Judge on appreciation of the evidence of eight witnesses and other connected evidence came to the conclusion of guilt of the accused and convicted him as aforesaid to suffer R.I. for life.

4. P.w.1 Parisa Malu Kambale is the father of victim Sarita on whose complaint the prosecution started. He has deposed about the illtreatment meted out to the victim by the accused. He was told in the morning of 5th July about the death of his daughter. He therefore went to her place, saw the dead body and after post mortem cremated the body. He has very vaguely stated about the illtreatment meted out to the victim by the accused. He is not an eye witness. Beyond speaking to prove the illtreatment, the evidence of this witness is

inconsequential. Similarly is the case of P.2. Usha, who is the mother of the victim, who generally corroborates the father P.w.1 Parisa. She is also not an eye witness and consequently beyond speaking of illtreatment proves nothing. P.w.3 is one Rajendra and it was this man with whom Sarita had a friendship and accused suspected her affair with him because of her knowing each other. He has categorically stated that there was no such relationship between him and Sarita. The prosecution appears to have examined this witness to show where the doubt of the accused would vests. It is however pertinent to note that the evidence of this witness therefore takes away the foundation of the prosecution that the accused suspecting the fertility of his wife and therefore murdered her. In any event, this evidence is only inconsequential in so far as proving of murder is concerned. He deposed to a quarrel, which took place months ago to the date of incident. Probably he is examined to prove the illtreatment meted out by the accused to the victim.

5. P.w.5 Ragrao Kallu is the father of the accused and was declared hostile. P.w.6 Maruthi is the police constable who recorded the complaint of the accused i.e. wife met accidental death. P.w.7 is the doctor who has stated that the death was caused due to

strangulation and the body was burnt. He has deposed that the death was caused due to strangulation and the burns at the body were not ante mortem. P.w.8 is the investigating officer. It is on the basis of this evidence that the learned Judge convicted the accused under section 302 of IPC.

6. It has come on record that the accused was not in the house when the wife was either strangulated or burnt. The house was closed and latched from inside. The panchanama very clearly discloses that accused arrived at the spot i.e. his house which was closed from all sides and therefore he climbed the roof and entered through the roof. The investigating officer has categorically admitted this aspect. Para 3 of his deposition reads as under:

> *3. ..... After the incident so many persons gathered at the house of the accused. It also transpired in the investigation that the doors of the house was latched from inside and so somebody brought the ladder. It also transpired that one Balasaheb Sawant Kamble tried to enter the house by removing the tiles of the roof. It also transpired in the investigation that the accused then came*

there as he had been to latrine and he then entered the house from the roof by removing the tiles. It also transpired that he opened the door from inside and then the peoples entered the house."

7. From the above, it is obvious that the accused was not inside the house when the wife was burnt. The entire case therefore rests on the fact that the husband and wife were together last and wife found dead due to strangulation and burning. There is no evidence of throttling or strangulation otherwise present in the case. The body is no doubt burnt. The prosecution has not proved all the circumstances necessary for conviction solely based on circumstantial evidence. How circumstantial evidence is to be appreciated is laid down by the Supreme Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 S.C. page 1622.** It is now established that conditions essential for conviction on circumstantial evidence must be fulfilled.

The following conditions must be filled before a case against an accused based on circumstantial evidence can be said to be fully established.

1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established.

2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3) The circumstances should be of a conclusive nature and tendency.

4) They should exclude every possible hypothesis except the one to be proved, and

5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all

human probability the act must have been done by the accused.

A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction.

8. From the above requirements of law it will be seen that all circumstances leading to death must be proved and must be attributable to the accused alone. In this case except the circumstances that a man and wife stay together and were together during the night and then the wife was found dead, nothing can been seen and attributed. The fact that the death was homicidal, though proved it is not necessarily meant that the homicidal death was caused by the accused. Admittedly the accused was not in the house. It is proved on record that the house was latched from inside. There is no evidence either oral or documentary which can prove that the accused committed the crime, latched the house from inside and somehow went out of the house. There is no evidence of any breaking in or out except that which occurred in presence of the accused and when he was admittedly outside the house. In such circumstances, it cannot be said that the prosecution

has proved beyond doubt the involvement of the accused in death of the victim. Suspicion however strong can never take place of proof. This is one such case where one may seriously suspect the accused to be involved in the commission of the crime. The evidence on record, however points out differently. It certainly is not a case where finding of guilt could be reached on the basis of such flimsy evidence. The learned Judge has erred therefore in convicting the accused on such a weak circumstantial evidence. In our opinion, the conviction is unsustainable . In the result the appeal succeeds and is allowed. The accused is already on bail. His bail bonds are cancelled.

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